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KEEP AMERICA SAFE AND BEAUTIFUL

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Attorneys for Defendant
SCS DIRECT, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

SCS DIRECT, INC.; and DOES 1-30,
inclusive,

Defendants.

Case No. CGC-21-594364

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

Case Filed: August 6, 2021
Trial: Vacated

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful (“KASB”) and defendant SCS Direct, Inc. (“SCS”), with KASB and SCS Direct each
4 individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in the
5 April 7, 2021 60-Day Notice of Violation in compliance with the Safe Drinking Water and Toxic
6 Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

8 KASB is a California-based non-profit organization proceeding in the public interest pursuant
9 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
10 California to cause cancer, birth defects, or other reproductive harm are disclosed to consumers, or
11 eliminated from consumer products sold in California. SCS is a person in the course of doing
12 business for purposes of California Health & Safety Code § 25249.11(b).

13 **1.2 Consumer Product Description**

14 KASB alleges that SCS manufactures, imports, sells, or distributes for sale in California tools
15 with vinyl grips containing di(2ethylhexyl) phthalate (“DEHP”), including but not limited to, the
16 *Lawn Jaws The Original Sharktooth Weed Puller Remover & Gardening Tool, Model# LWJ-JAW-*
17 *580, ASIN# B00DPQW8R4, UPC# 6 70541 19258 0*, without providing the “clear and reasonable
18 warning” KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.*
19 (“Proposition 65”). All such tools with vinyl grips are referred to hereinafter as the “Products.”
20 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
21 cancer and birth defects and other reproductive harm.

22 **1.3 Notice of Violation**

23 On April 7, 2021, KASB served SCS, the Office of the Attorney General for the State of
24 California (“OAG”), and all requisite public enforcement agencies with a 60-Day Notice of
25 Violation (“Notice”). In the Notice, KASB alleges SCS violated Proposition 65 by failing to warn its
26 customers and consumers in California the Products can expose users to DEHP. No public enforcer
27 has commenced and is diligently prosecuting an action to enforce the allegations set forth in the
28 Notice.

1 **1.4 Complaint**

2 On August 6, 2021, KASB commenced the instant action (“Complaint”), naming SCS as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.5 No Admission**

5 SCS denies the material, factual and legal allegations contained in the Notice and Complaint
6 and maintains that all products it sold or distributed for sale in California, including the Products,
7 comply, and at all times have complied, with all laws. Neither any term of this Consent Judgment
8 nor SCS’ compliance with its terms shall be construed as an admission by SCS of any fact, finding,
9 conclusion of law, issue of law, or violation of law. This Section shall not, however, diminish or
10 otherwise affect SCS’s obligations, responsibilities, and duties under this Consent Judgment.

11 **1.6 Jurisdiction**

12 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
13 jurisdiction over SCS as to the allegations contained in the Complaint; that venue is proper in San
14 Francisco County Superior Court; and that the Court has jurisdiction to enter and enforce the
15 provisions of this Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure
16 § 664.6.

17 **1.7 Effective Date**

18 The term “Effective Date” means the date on which the Court approves this Consent
19 Judgment and enters Judgment pursuant to its terms.

20 **1.8 Compliance Date**

21 The term “Compliance Date” means thirty (30) days from the date on which the Court
22 approves this Consent Judgment and enters Judgment pursuant to its terms, and no earlier than March
23 3, 2025.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Commitment to Reformulate Products or Provide Warnings**

26 SCS shall meet either the reformulation standard or provide a warning in compliance with
27 this Section 2 by the Compliance date and at its sole choice and discretion. Commencing on the
28 Compliance Date and continuing thereafter, all Products SCS manufactures, imports, packages, sells,

ships, provides, or distributes for sale in or into California, directly or indirectly through one or more third party retailers or e-commerce marketplaces, shall either qualify as Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable warning pursuant to Section 2.3.


2.2 Reformulation Standard

For purposes of this Consent Judgment, "Reformulated Products" are defined as Products containing DEHP in a maximum concentration of 0.1 percent (1,000 parts per million) in any "accessible component" (i.e., any component that may be touched during a reasonably foreseeable use) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission ("CPSC") methodology CPSC CH-C1001.09.4 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings


Commencing on the Compliance Date and continuing thereafter, for all Products that do not meet the definition of Reformulated Products established by Section 2.2, above, and area sold or distributed for sale in California by SCS, SCS shall provide clear and reasonable warnings in accordance with this Section and pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness when compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. The warning for Products containing DEHP in amounts greater than 1,000 ppm (0.1%) shall consist of one of the following statements:

(a) Warning: The Warning shall consist of the following statement:


 **WARNING:** This product can expose you to chemicals including di(2-ethylhexyl) phthalate [DEHP], which is known to the

1 State of California to cause cancer and birth defects or other
2 reproductive harm. For more information go to
3 www.P65Warnings.ca.gov.

4 (a) **Short-Form Warnings.** SCS may, but is not required to, use the following short-form
5 warning as set forth in this subsection 2.3(b), subject to the additional requirements in Sections 2.4
6 and 2.5, as follows:


7  **WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Risk of
8 cancer and reproductive harm from exposure to di(2-ethyhexyl) phthalate (DEHP). See
9 www.P65Warnings.ca.gov.

10 - Or -

11  **WARNING [or] CA WARNING [or] CALIFORNIA WARNING:** Can expose
12 you to di(2-ethyhexyl) phthalate (DEHP), a carcinogen and reproductive toxicant. See
13 www.P65Warnings.ca.gov.

14 - Or -

15 The following warning statement may be used on Products containing DEHP
16 manufactured and labeled prior to January 1, 2028:

17  **WARNING:** Cancer and Reproductive Harm – www.P65Warnings.ca.gov

18 (c) **Foreign Language Requirement.** Where a consumer product sign, label or shelf tag used
19 to provide a warning includes consumer information, as that term is defined in Title 27 California
20 Code of Regulations section 25600.1(c) (“Consumer Information”), in a language other than English,
21 the warning must also be provided in those other language(s).

22 If Proposition 65 or its implementing regulations change from the requirements as they exist
23 on the date the Parties stipulate to this Consent Judgment with respect to levels of DEHP or other
24 phthalate chemicals that trigger Proposition 65 warning obligations or permissible safe-harbor warning
25 language, SCS may, pursuant to Sections 7 and 12, below, seek modification of this Consent Judgment
26 in accordance with California law.

27 **2.4 Product Warnings**

28 SCS shall affix a warning to the Product label or otherwise directly on each Product sold or
offered for sale to consumers in California and to customers with known retail outlets in California or

1 with known nationwide distribution. For purposes of this Consent Judgment, "Product label" means a
2 display of written, printed or graphic material that is printed on or affixed to each of a Product or its
3 immediate container or wrapper. A warning provided pursuant to Section 2.3(a)-(c) must print the word
4 "WARNING:" in all capital letters and in bold font. The warning symbol to the left of the word
5 "WARNING:" must be a black exclamation point in a yellow equilateral triangle with a black outline,
6 except that if the labeling does not use yellow, then the symbol may be in black and white. If using the
7 Short-Form Warning option set forth above, the entire warning shall appear in a type size of at least 6-
8 point type and no smaller than the largest type size used for other Consumer Information on the
9 Products.

10 **2.5 Internet Warnings**

11 If, after the Compliance Date, SCS sells Products via the internet directly, or indirectly through
12 customers with nationwide distribution or e-commerce websites, to customers located in California,
13 SCS shall provide warnings for each Product both on the Product label in accordance with Section 2.4,
14 and by including either the warning or a clearly marked hyperlink using the word "WARNING" on
15 the product display page, or by otherwise prominently displaying the warning to the purchaser prior to
16 completing the purchase and without requiring the purchaser to search for the warning in the general
17 content of the website. The warning or a clearly marked hyperlink to the warning using the word
18 "WARNING" given in conjunction with the sale of the Products via the internet shall appear either: (a)
19 on the same web page on which the Products are displayed; (b) on the same web page as the virtual
20 cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more
21 web pages displayed to a purchaser during the checkout process. The warning shall appear in any of
22 the above instances adjacent to or immediately following the display, description or price of the
23 Products for which it is given in the same type size or larger than other consumer information provided
24 for the Products. The internet warning may use the Short-Form Warning content described in Section
25 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content. For
26 third-party websites, as a condition of sale, SCS shall notify the sellers the Products must be
27 accompanied by a warning, prior to and as a condition of sale, in or into California, and shall supply
28 the warning requirements, as detailed above.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Total Financial Obligation**

3 SCS agrees to a total financial obligation of \$20,000 to be paid in separate installments
4 according to the amounts and deadlines set forth below in Sections 3.2 and 3.3.

5 **3.1 Civil Penalty**

6 Within thirty (30) days of the Effective Date, pursuant to Health and Safety Code
7 § 25249.7(b), SCS agrees to pay a civil penalty of \$3,000.00. SCS' civil penalty payment will be
8 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
9 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
10 ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. SCS shall issue its
11 payment in two checks made payable to: (a) "OEHHA" in the amount of \$2,250.00; and (b) "Seven
12 Hills LLP in Trust for KASB" in the amount of \$750.00. KASB's counsel shall deliver to OEHHA
13 and KASB their respective portions of the penalty payment.

14 **3.2 Reimbursement of Attorneys' Fees and Costs**

15 The Parties negotiated and reached an accord on the amount of reimbursement to be paid to
16 KASB's counsel, under general contract principles and the private attorney general doctrine,
17 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
18 execution and reporting of this Consent Judgment to the Office of the OAG and entry of Judgment
19 pursuant its terms, but exclusive of fees and costs on appeal, if any. SCS agrees to pay \$17,000 in
20 three installments in the form of three checks payable to "Seven Hills LLP" according to the
21 payment schedule set forth below. SCS' payment pursuant to this Section 3.2 shall include all fees
22 and costs incurred investigating, bringing this matter to SCS's attention, litigating, negotiating a
23 settlement in the public interest, obtaining the Court's approval of its terms pursuant to Section 5,
24 and reporting to the OAG.

25 Payment Schedule:

- 26 1. First check for 8,500 due on or before March 31, 2025, or the Effective Date,
27 whichever is later; and
28 2. A second check for 8,500 due on or before June 30, 2025.

1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be delivered to KASB's
3 counsel at the following address:

4 Seven Hills LLP
5 Attn: Kimberly Gates Johnson
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 KASB's Release of Proposition 65 Claims**

9 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
10 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
11 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
12 representatives, attorneys, successors and assignees ("Releasers") releases SCS, its past and present
13 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
14 attorneys, and each entity to whom SCS directly or indirectly distributes or sells the Products
15 including, but not limited to, its downstream distributors, wholesalers, marketplace hosts, customers,
16 retailers, franchisees, cooperative members, and licensees ("Releasees") based on the alleged or
17 actual failure to provide a clear and reasonable warning under Proposition 65 about exposures to
18 DEHP from Products manufactured, processed, distributed, sold and/or offered for sale in California
19 before the Effective Date. The Parties further agree that compliance with Section 2 of this Consent
20 Judgment shall be deemed compliance with Proposition 65 with respect to alleged exposures to
21 DEHP in the Products. The Parties further understand and agree these Section 4.1 and Section 4.2
22 releases shall not extend upstream to any entity who sold or otherwise provided the Products, or any
23 component parts thereof, to SCS. Nor shall these Section 4 releases extend downstream to any entity
24 or individual instructed by SCS to provide a warning in accordance with Sections 2.3 through 2.5,
25 above, who fails to do so. Nothing in these Section 4 releases shall affect KASB's right to commence
26 or prosecute an action under Proposition 65 against a Releasee that does not involve SCS' Products.
27
28

1 **4.2 KASB's Individual Release of Claims**

2 KASB, in its individual capacity only and not in its representative capacity, also hereby
3 provides a release to SCS and the Releasees which shall be effective as a full and final accord and
4 satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys' fees,
5 damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out
6 of alleged or actual exposures to DEHP in Products manufactured or distributed into the State of
7 California by SCS prior to the Effective Date. Nothing in this section shall affect KASB's right to
8 commence or prosecute an action under Proposition 65 against a Releasee that does not involve SCS
9 Products.

10 **4.3 SCS' Release of KASB**

11 SCS Direct, on behalf of itself, its past and current agents, representatives, attorneys,
12 successors, and assignees, hereby waives any and all claims against KASB and its attorneys and other
13 representatives, for any and all actions taken or statements made (or those that could have been taken
14 or made) by KASB and its attorneys and other representatives, whether in the course of investigating
15 claims or otherwise seeking to enforce Proposition 65 against him in this matter with respect to the
16 Products.

17 **4.4 Mutual Waiver of California Civil Code § 1542**

18 KASB, on behalf of itself only and *not* in the public interest, on the one hand, and SCS Direct
19 on the other hand, each acknowledge that the claims in this Agreement include all known and
20 unknown claims pertaining to DEHP contained in the Products that were sold in California before the
21 Effective Date, except as provided in Section 4.1 hereinabove, and each waive the provisions of
22 California Civil Code section 1542 as to any unknown claims pertaining to the failure to warn about
23 DEHP in Products sold in California prior to the Effective Date. Section 1542 provides:

24 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
25 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
26 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
 WITH THE DEBTOR OR RELEASED PARTY.

27 The Parties acknowledge and understand the significance and consequences of this specific waiver of
28 California Civil Code § 1542.

1 **5. COURT APPROVAL**

2 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
3 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
4 best efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
5 Consent Judgment, and to judicial approval of their settlement in a timely manner. For purposes of
6 this section, "best efforts" shall include, at a minimum, supporting the motion for approval,
7 responding to any third-party objection, and appearing at the hearing before the Court if so requested.

8 **6. SEVERABILITY**

9 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
10 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
11 remaining provisions shall not be adversely affected.

12 **7. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of California
14 and apply within California. If Proposition 65 is repealed, preempted, or otherwise rendered
15 inapplicable by reason of law generally, or as to the Products or DEHP, then SCS Direct may seek a
16 modification of this Consent Judgment pursuant to Section 12, below. Nothing in this Consent
17 Judgment shall be interpreted to relieve SCS Direct from its obligation to comply with any state or
18 federal law.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment
21 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
22 (ii) a recognized overnight courier to any Party by the other at the following addresses:

23 For SCS Direct:

24 Howard Greenspan, President
25 SCS Direct, Inc.
26 9 Trefoil Drive #2
27 Trumbull, CT 06611

For KASB:

Brian Johnson, Esq.
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

28 With a copy to:

///

1 J. David Bournazian, Esq.
2 K&L Gates LLP
3 1 Park Plaza
Twelfth Floor
Irvine, CA 92614

4 Any Party may, from time to time, specify in writing to the other Party a change of address to which
5 all notices and other communications shall be sent.

6 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

7 This Consent Judgment may be executed in counterparts and by portable document format
8 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
9 shall constitute one and the same document.

10 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

11 KASB and its counsel agree to comply with the reporting form requirements referenced in
12 California Health and Safety Code § 25249.7(f).

13 **11. ENTIRE AGREEMENT**

14 This Consent Judgment contains the sole and entire agreement and understanding of the
15 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
16 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No
17 warranty, representation, or agreement between the Parties exists except as expressly set forth
18 herein. No representation, oral or otherwise, express or implied, other than those specifically
19 referred to in this Consent Judgment have been made by any Party. No agreement not specifically
20 contained herein shall be deemed to exist or to bind any Party hereto.

21 **12. MODIFICATION**

22 This Consent Judgment may be modified only by: (i) a written agreement of the Parties
23 (which agreement shall not be unreasonably withheld) and the entry of a modified Consent Judgment
24 by the Court thereon; or (ii) upon a successful motion of any party and the entry of a modified
25 Consent Judgment by the Court thereon. No Party shall seek modification of this Consent Judgment
26 without first providing written notice to the other Party of the basis for the modification sought, and
27 meeting and conferring in good faith for a period of not less than 30 days, prior to moving the Court
28 for an order modifying the Consent Judgment. In the event the Parties or either Party seek(s)

1 modification of this Consent Judgment, the Party or Parties shall provide the OAG with no less than
2 45 days' notice of their intended revision(s) to the Consent Judgment prior to any hearing by the
3 Court on a motion for approval of such modification.

4 **13. AUTHORIZATION**

5 The undersigned are authorized to execute this Consent Judgment on behalf of their
6 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
7 Consent Judgment.

8 **AGREED TO:**

AGREED TO:

9
10 Date: 2/20/2025

Date: 1/31/25

11 By: 

12 Lance Nguyen, CEO
13 KEEP AMERICA SAFE AND
14 BEAUTIFUL

By: 

Howard Greenspan, President
SCS DIRECT, INC.